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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 NUTRAMAX LABORATORIES, INC.
9 and NUTRAMAX LABORATORIES
10 VETERINARY SCIENCES, INC.,

11 Plaintiffs,

12 v.

13 JT BEST DEALS LLC,

14 Defendant.

15 CASE NO. 2:23-CV-1885

16 ORDER ON PLAINTIFFS' MOTION
17 FOR DEFAULT JUDGMENT

18 **1. INTRODUCTION**

19 Before the Court is Plaintiffs Nutramax Laboratories, Inc. and Nutramax
20 Laboratories Veterinary Sciences, Inc.'s (together, "Nutramax") motion for default
21 judgment against Defendant JT Best Deals LLC. Dkt. No. 16. JT Best Deals has not
22 appeared in this action and did not file a response to the motion. *See generally* Dkt.
23 The Court has considered the motion, the remaining record, and applicable law and
GRANTS Nutramax's motion for default judgment.

2. BACKGROUND

On December 7, 2023, Nutramax filed its complaint against JT Best Deals alleging trademark infringement and false designation of origin under the Lanham Act and tortious interference with contract under Washington common law. Dkt. No. 1.

Nutramax distributes products through multiple channels, including the pure play ecommerce channel. *Id.* at 5. Almost all of the authorized resellers in the pure play ecommerce channel have entered into an Authorized Reseller Agreement (“Agreement”) with Nutramax. *Id.* The Agreement obligates the resellers to meet certain requirements to ensure a high level of product quality and customer service. *Id.* Nutramax claims that products that are sold by unauthorized resellers are materially different from Nutramax products that travel through authorized distribution channels. *Id.* at 6. As a result, Nutramax cannot guarantee the quality of these products because they may not have been handled and stored as Nutramax intended. *Id.*

JT Best Deals is a pure play ecommerce seller with no brick-and-mortar retail or other sales outlet. *Id.* at 6. Nutramax alleges JT Best Deals is using the Nutramax Marks and is engaged in the unauthorized sale of Nutramax’s Dasuquin® Soft Chews for Cats supplements (“Dasuquin® Supplements”). *Id.* This is misleading customers to believe that the products being sold by JT Best Deals are the same as the products Nutramax sells online through its authorized resellers. *Id.* at 7. The products being sold by JT Best Deals are “materially different” than the products being sold by the authorized resellers. *Id.*

1 Nutramax sued JT Best Deals to “stop unauthorized resellers from
2 unlawfully interfering with Nutramax’s contractual relationships with its
3 authorized resellers, and from selling and distributing under Nutramax’s well-
4 known trademarks, products that are materially different from Nutramax’s
5 authorized products without Nutramax’s consent or supervision.” Dkt. No. 1 at 1.

6 On December 29, 2023, Nutramax served JT Best Deals’s registered agent
7 with a summons and complaint. Dkt. No. 12. JT Best Deals failed to respond to the
8 lawsuit. *See generally* Dkt. On January 29, 2024, the clerk entered default against
9 JT Best Deals. Dkt. No. 15.

10 **3. DISCUSSION**

11 **3.1 Legal standard.**

12 Under Rule 55, the default process occurs in two steps. First, if a defendant
13 fails to plead or otherwise defend, the clerk of the court will enter an order of
14 default against the defendant. Fed. R. Civ. P. 55(a). Second, upon a plaintiff’s
15 request or motion, the court may grant default judgment for the plaintiff. Fed. R.
16 Civ. P. 55(b)(2). Entry of default judgment is left to the court’s discretion. *Aldabe v.*
17 *Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Because granting or denying relief is
18 within the court’s discretion, a defendant’s default does not automatically entitle a
19 plaintiff to a court-ordered judgment. *Id.* The Ninth Circuit has established seven
20 factors (the “*Eitel* factors”) for courts to consider when deciding how to exercise this
21 discretion: (1) the possibility of prejudice to the plaintiff without a judgment, (2) the
22 merits of plaintiff’s claims, (3) the sufficiency of the complaint, (4) the amount of
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1 money at stake in the action; (5) the possibility of a dispute concerning material
2 facts; (6) whether default was due to excusable neglect, and (7) the policy preference
3 for decisions on the merits when reasonably possible. *Eitel v. McCool*, 782 F.2d
4 1470, 1471–72 (9th Cir. 1986).

5 At the default judgment stage, the courts consider true all well-pleaded
6 factual allegations in the complaint that are unrelated to damages. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987); *Geddes v. United Fin. Grp.*,
7 559 F.2d 557, 560 (9th Cir. 1977); Fed. R. Civ. P. 8(b)(6). Courts must ensure the
8 amount of damages is reasonable and supported by the plaintiff’s evidence. See
9 *TeleVideo Systems, Inc.*, 826 F.2d at 917–18; *LG Elecs., Inc. v. Advance Creative*
10 *Comput. Corp.*, 212 F. Supp. 2d 1171, 1178 (N.D. Cal. 2002) (“The evident policy of
11 [Rule 55(b)] is that even a defaulting party is entitled to have its opponent produce
12 some evidence to support an award of damages.”). And “[a] default judgment must
13 not differ in kind from, or exceed in amount, what is demanded in the pleadings.”
14 Fed. R. Civ. P. 54(c). The Local Civil Rules further require plaintiffs to support a
15 motion for default judgment with “a declaration and other evidence establishing
16 plaintiff’s entitlement to a sum certain . . .” and they must “provide a concise
17 explanation of how all amounts were calculated, and shall support this explanation
18 with evidence establishing the entitlement to and amount of the principal claim,
19 and, if applicable, any liquidated damages, interest, attorney’s fees, or other
20 amounts sought.” LCR 55(b)(2)(A).

1 **3.2 The Court has subject matter and personal jurisdiction.**

2 Before entering a default judgment, a court must confirm it has jurisdiction
 3 to enter the judgment. *See In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999).

4 The Court has subject matter jurisdiction over all three of Nutramax's
 5 claims. Nutramax alleges two federal claims under the Lanham Act, 15 U.S.C. §§
 6 1114(1) & 1125(a). "The Lanham Act grants federal subject-matter jurisdiction over
 7 'all actions arising under this chapter, without regard to the amount in controversy
 8 or to diversity or lack of diversity of the citizenship of the parties.'" *La Quinta*
 9 *Worldwide LLC v. Q.R.T.M., S.A. de C.V.*, 762 F.3d 867, 873 (9th Cir. 2014) (quoting
 10 15 U.S.C. § 1121(a)).

11 Accordingly the Court has subject matter jurisdiction over these claims.
 12 Additionally, under 28 U.S.C. § 1337(a), the Court has supplemental jurisdiction
 13 over Nutramax's state-law claim. Federal courts have supplemental jurisdiction
 14 over all state-law claims that are within the same common nucleus of operative
 15 facts as the claim with original jurisdiction. *Ventura Content, Ltd. v. Motherless,*
 16 *Inc.*, 885 F.3d 597, 619 (9th Cir. 2018). The Washington common law claim for
 17 tortious interference with a contract arises from the same common nucleus of
 18 operative facts that give rise to the trademark infringement and unfair competition
 19 claims under the Lanham Act. The Court will exercise supplemental jurisdiction
 20 over the Washington common law claim.

21 Additionally, the Court has diversity jurisdiction because Plaintiffs and
 22 Defendant are citizens of different states and the amount in controversy exceeds
 23 \$75,000.

1 The Court also has personal jurisdiction over JT Best Deals. A court has
2 general personal jurisdiction over a corporate defendant in a state where “the
3 corporation is fairly regarded as at home.” *Daimler AG v. Bauman*, 571 U.S. 117,
4 137 (2014). “The paradigm all-purpose forums for general jurisdiction are a
5 corporation’s place of incorporation and principal place of business.” *Id.* at 118. JT
6 Best Deals is a Washington Limited Liability Corporation formed under
7 Washington law. All of its officers are in Washington, and it is properly considered
8 “at home” in Washington. Therefore, the Court has general personal jurisdiction
9 over JT Best Deals.

10 Accordingly, the Court has both subject matter jurisdiction over Nutramax’s
11 claims and personal jurisdiction over JT Best Deals.

12 **3.3 The *Eitel* factors favor default judgment.**

13 **3.3.1 Nutramax will face prejudice absent default judgment.**

14 Under the first *Eitel* factor, default judgment is favored where “the plaintiff
15 has ‘no recourse for recovery’ other than default judgment.” *Curtis v. Illumination*
16 *Arts, Inc.*, 33 F. Supp. 3d 1200, 1211 (W.D. Wash. 2014) (quoting *Philip Morris*
17 *USA, Inc. v. Castworld Prod., Inc.*, 219 F.R.D. 494, 499 (C.D. Cal. 2003)). Here,
18 despite timely service of process, JT Best Deals failed to defend itself in this
19 litigation. *See generally* Dkt. As a result, Nutramax will suffer prejudice if default
20 judgment is not entered because it will “be denied the right to judicial resolution” of
21 its claims. *Elektra Ent. Grp. Inc. v. Crawford*, 226 F.R.D. 388, 391 (C.D. Cal. 2005).
22 Therefore, the first *Eitel* factor favors default judgment.
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1 **3.3.2 Nutramax adequately plead its claims.**

2 The second and third *Eitel* factors are often analyzed together. They require
3 the plaintiff to “state a claim on which the [plaintiff] may recover.” *PepsiCo, Inc. v.*
4 *Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002) (internal citation
5 omitted). The plaintiff must bring claims that “cross the line from conceivable to
6 plausible.” *Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009). At the default judgment
7 stage, the court takes “well-pleaded factual allegations’ in the complaint ‘as true,’”
8 but “necessary facts not contained in the pleadings, and claims which are legally
9 insufficient, are not established by default.” *Cripps v. Life Ins. Co. of N. Am.*, 980
10 F.2d 1261, 1267 (9th Cir. 1992).

11 Nutramax alleges claims for trademark infringement and false designation of
12 origin under the Lanham Act. Because the analysis “under the two provisions is
13 oftentimes identical,” the Court will evaluate them together. *Brookfield Commc’ns,*
14 *Inc. v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1046 n.8 (9th Cir. 1999). “To
15 demonstrate a violation under either provision, the plaintiff must point to a
16 protectable interest in the mark and the likelihood of confusion.” *Gen. Motors Corp.*
17 *v. Let’s Make A Deal*, 223 F. Supp. 2d 1183, 1193 (D. Nev. 2002); *See also ERBE*
18 *Elektromedizin GmbH v. Canady Tech. LLC*, 629 F.3d 1278, 1287 (Fed. Cir. 2010)
19 (Under the Lanham Act, a plaintiff must prove “(1) it has a valid and legally
20 protectable mark; (2) it owns the mark; and (3) the defendant’s use of the mark to
21 identify goods or services causes a likelihood of confusion” to establish infringement
22 of a trademark.); *Enlightened Today LLC v. Soulmate Medium LLC*, No. C23-0985-
23 SKV, 2023 WL 6239330, at *9 (W.D. Wash. Sept. 26, 2023) (“[A] false designation of

1 origin claim is recognized as the equivalent of a claim for trademark infringement. .
2 .and also requires a plaintiff to show a protectable ownership interest in a mark and
3 a likelihood of consumer confusion.”).

4 Federal registration of a trademark “provides ‘prima facie evidence’ of the
5 mark’s validity and entitles the plaintiff to a ‘strong presumption’ that the mark is a
6 protectable mark.” *Zobmondo Ent., LLC v. Falls Media, LLC*, 602 F.3d 1108, 1113
7 14 (9th Cir. 2010) (quoting 15 U.S.C. §§ 1057, 1115(a)). In the Complaint, Nutramax
8 alleged that the U.S. Patent and Trademark Office has issued “registration for
9 [Nutramax Marks].” Dkt. No. 1 ¶ 19.

10 Nutramax also alleges that the quality of products may be materially
11 different because JT Best Deals is not bound by the Agreement to store Nutramax
12 products in a “cool, dry area out of direct sunlight in a controlled room.” Dkt. No. 1 ¶
13 28. This may compromise the quality of the products. “[T]he lack of quality control
14 can rise to the level of a material difference from the trademark owner’s products
15 and create a likelihood of confusion.” *Davidoff & CIE, S.A. v. PLD Int’l Corp.*, 263
16 F.3d 1297, 1300 n.4 (11th Cir. 2001); *see also Hokto Kinoko Co. v. Concord Farms,
17 Inc.*, 738 F.3d 1085, 1094 (9th Cir. 2013) (“[D]ifferences in language, quality control,
18 and packaging may each be sufficiently material to render imported goods not
19 ‘genuine.’”). Nutramax has sufficiently alleged trademark infringement and false
20 designations of origin claims.

21 Nutramax also alleges tortious interference with a contract. “A claim for
22 tortious interference with a contractual relationship or business expectancy
23 requires five elements: (1) the existence of a valid contractual relationship or

1 business expectancy; (2) that defendants had knowledge of that relationship; (3) an
2 intentional interference inducing or causing a breach or termination of the
3 relationship or expectancy; (4) that defendants interfered for an improper purpose
4 or used improper means; and (5) resultant damage.” *Leingang v. Pierce Cnty. Med.*
5 *Bureau, Inc.*, 930 P.2d 288, 300 (Wash. 1997).

6 First, Nutramax has entered into Authorized Reseller Agreements with its
7 authorized resellers. Dkt. No. 1 ¶ 25–28. Next, JT Best Deals is on notice that
8 Nutramax has contracts with its authorized resellers because Nutramax has sent
9 JT Best Deals multiple letters notifying it of those contracts. *Id.* ¶ 46. Third,
10 Nutramax alleges that JT Best Deals intended to induce the breach of the
11 Authorized Reseller Agreements. There are no authorized resellers who are
12 permitted to sell Nutramax products to JT Best Deals. *Id.* ¶ 44. Nutramax has
13 notified JT Best Deals of this. *Id.* ¶ 46. JT Best Deals continues to source
14 Nutramax’s products from authorized resellers. *Id.* ¶ 47. Fourth, Nutramax alleges
15 that JT Best Deals interfered with Nutramax’s conduct for an unauthorized
16 purpose. It sourced Nutramax’s goods to later sell those goods in violation of the
17 Lanham Act. *Id.* ¶ 68–70. Lastly, Nutramax alleges that it suffered irreparable
18 harm due to JT Best Deal’s tortious interference. Nutramax has been unable to
19 control the distribution and quality of its products. *Id.* ¶ 69.

20 Nutramax has adequately alleged and supported each element of its three
21 claims. Because these elements have been adequately alleged and supported, these
22 two factors favor default judgment.

1 **3.3.3 The relief sought is proportional to the allegations against**
2 **JT Best Deals.**

3 The fourth *Eitel* factor favors default if “the recovery sought is proportional to
4 the harm caused by defendant’s conduct.” *Landstar Ranger, Inc. v. Parth Enter.,*
5 *Inc.*, 725 F. Supp. 2d 916, 921 (C.D. Cal. 2010). Nutramax seeks permanent
6 injunctive relief. It does not seek any monetary recovery. The Court finds that the
7 relief sought is proportional to the seriousness of JT Best Deals’ conduct. The fourth
8 *Eitel* factor also favors entry of default judgment.

9 **3.3.4 There is no dispute as to the material facts.**

10 The fifth *Eitel* factor supports a default judgment if there is no dispute as to
11 the material facts of the case. *Eitel*, 782 F.2d at 1471. JT Best Deals failed to
12 appear, and the Court must accept all well-pleaded allegations in the complaint as
13 true, other than those related to damages. *TeleVideo Systems, Inc.*, 826 F.2d at 917–
14 18. Because nothing in the record suggests any factual disputes, this factor also
15 warrants default judgment.

16 **3.3.5 The record does not show excusable neglect.**

17 Courts may consider whether circumstances surrounding a party’s failure to
18 respond are because of excusable neglect. *Eitel*, 782 F.2d at 1472. Excusable neglect
19 may “be lacking where a defendant was properly served with the complaint and
20 notice of default judgment.” *Indian Hills Holdings, LLC v. Frye*, 572 F. Supp. 3d
21 872, 889–90 (S.D. Cal. 2021) (citation omitted). Here, Nutramax timely served JT
22 Best Deals’s registered agent with a summons and copy of the complaint on
23 December 29, 2023. Dkt. No. 12. JT Best Deals’s deadline to answer the complaint

1 was thus 21 days later on January 19, 2024. *See* Fed. R. Civ. P. 12(a)(1)(A)(i)
2 (stating that a defendant must serve an answer within 21 days of service with the
3 complaint and summons). JT Best Deals did not file an answer, nor did it file a
4 motion under Rule 12. *See generally* Dkt. Nutramax moved for default on January
5 23, 2024. Dkt. No. 15. Nothing in the record shows that JT Best Deals was without
6 notice of the action or was misled by Nutramax. The Court thus concludes that JT
7 Best Deals' failure to respond was not because of excusable neglect. Therefore, the
8 sixth *Eitel* factor also justifies default judgment.

9 **3.3.6 Public policy favors a decision on the merits.**

10 There is a preference for deciding cases on the merits, but this preference is
11 not absolute. *PepsiCo, Inc.*, 238 F. Supp. 2d at 1177. If the defendant's "failure to
12 answer [a c]omplaint makes a decision on the merits impractical," the "preference to
13 decide cases on the merits does not preclude a court from granting default
14 judgment." *Id.* (internal citations omitted). Rule 55(b) permits entry of default
15 judgment when the defendant refuses to litigate, which is the case here. Fed. R. Civ.
16 P. 55(b). Thus, the final *Eitel* factor supports default judgment.

17 Because all the *Eitel* factors weigh in favor of default judgment, the Court
18 concludes that default judgment is warranted and looks next at the recovery.

19 **3.4 The Court grants Nutramax's request for permanent injunction.**

20 Now that the Court has found default judgment proper, it must determine
21 what relief Nutramax is entitled to.

Under the Lanham Act, courts have “the power to grant injunctions according to principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the trademark owner.” *Reno Air Racing Ass’n., Inc. v. McCord*, 452 F.3d 1126, 1137 (9th Cir. 2006) (internal quotation omitted). To obtain an injunction, the plaintiff must show: “(1) [it] has suffered an irreparable injury, (2) remedies available at law, such as monetary damages, are inadequate to compensate for that injury, (3) considering the balance of hardships between plaintiff and defendant, a remedy in equity is warranted, and (4) the public interest is not disserved by a permanent injunction.” *Amazon.com Inc. v. Zhi*, No. 220CV01215TMCMLP, 2024 WL 943465, at *5 (W.D. Wash. Mar. 4, 2024).

First, irreparable harm is presumed when a plaintiff establishes trademark infringement. *Id.* (citing *T-Mobile USA, Inc. v. Terry*, 862 F. Supp. 2d 1121, 1133 (W.D. Wash. 2012); 15 U.S.C. § 1116). Nutramax has established trademark infringement because its claims are well-pleaded and because JT Best Deals failed to appear or otherwise offer a rebuttal.

Second, Nutramax cannot be made whole by a monetary award given that JT Best Deals willful infringements has harmed and continues to harm Nutramax’s business, reputation, and goodwill. “Harm resulting from lost customer goodwill is neither easily calculable, nor easily compensable and thus cannot be remedied by a monetary award.” *Amazon.com, Inc. v. Wong*, No. C19-0990JLR, 2024 WL 553695, at *10 (W.D. Wash. Feb. 12, 2024) (internal quotation omitted). Without a permanent injunction, Nutramax will need to file multiple suits to stop further infringement. Thus, the Court finds injunctive relief necessary to remedy the harm.

1 Third, the balance of hardships favors Nutramax. JT Best Deals does not
2 have a legitimate interest in unauthorized resales, and Nutramax faces continued
3 irreparable injury without injunctive relief. *See T-Mobile USA, Inc.*, 862 F. Supp. 2d
4 at 1133.

5 Fourth, entering a permanent injunction benefits the public by protecting the
6 rights of trademark holders and limiting consumer confusion. *Amazon.com, Inc. v.*
7 *White*, No. 2:20-CV-01773-JHC, 2022 WL 1641423, at *7 (W.D. Wash. May 24,
8 2022).

9 Because Nutramax satisfied the four elements above, the Court will enter a
10 permanent injunction against JT Best Deals.

11 **4. CONCLUSION**

12 **4.1** The Court GRANTS Nutramax's motion for default judgment under Fed. R.
13 Civ. P. 55(b)(1). Dkt. No. 16. The Court ENTERS judgment as to all claims.

14 **4.2** Defendant and its respective officers, agents, servants, employees, and/or all
15 persons acting in concert or participation with Defendant with actual notice of
16 this Order are hereby enjoined and restrained from:

17 **4.2.1** using Nutramax's trademarks (including, but not limited to,
18 Nutramax Laboratories®, Dasuquin®, and Proviable®) or colorable
19 imitations thereof in connection with the distribution, marketing,
20 advertising, or sale of any Nutramax product that Nutramax has
21 not authorized to be sold to or by Defendant;

22 **4.2.2** passing off, inducing, or enabling others to sell or pass off any

1 product as a Nutramax product that has not been produced under
2 the authorization, control, or supervision of Nutramax and approved
3 by Nutramax for sale to or by Defendant;

- 4 **4.2.3** shipping, delivering, transferring, moving, storing, distributing,
5 returning, or otherwise disposing of, in any manner, products or
6 inventory not authorized by Nutramax to be sold to or by Defendant.
7 **4.2.4** otherwise competing unfairly with Nutramax in an unlawful
8 manner.

9 **4.3** Defendant, those in privity with Defendant, and those with actual notice of
10 this Order – including any online retailers, social media platforms, internet
11 search engines, and email service providers for Defendant – shall:

- 12 **4.3.1** permanently remove all of Defendant's product listings for any
13 Nutramax products (including, but not limited to, Dasuquin® and
14 Provable® products), and thereafter prohibit Defendant from ever
15 relisting or offering for sale any Nutramax products;
16 **4.3.2** permanently remove any and all advertisements used by or
17 associated with Defendant in connection with the sale of any
18 Nutramax products; and
19 **4.3.3** deliver to Nutramax or destroy, at Nutramax's discretion, all
20 Nutramax products in Defendant's possession or held on behalf of
21 Defendant.

22 **4.4** Nutramax is hereby directed to serve a copy of this Order and Injunction on
23 JT Best Deals.

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2 Dated this 22nd day of May, 2024.
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5 Jamal N. Whitehead
6 United States District Judge
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